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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,340	01/03/2004	Daniel Lovy	1370.249US1	7580
21186 7590 01/06/2010 SCHWEGMAN, LUNDBERG & WOESSNER, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER RUTKOWSKI, JEFFREY M				
ART UNIT 2473		PAPER NUMBER		
NOTIFICATION DATE 01/06/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary

Application No.

10/751,340

Applicant(s)

LOVY ET AL.

Examiner

JEFFREY M. RUTKOWSKI

Art Unit

2473

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 73-112 have been cancelled.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/20/2009 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 1-72** recite the limitation "dissimilar communication devices that have been abstracted" on the last line of each independent claim. There is insufficient antecedent basis for this limitation in the claim because the claims do not previously recite that the dissimilar communication devices are abstracted.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 1-8, 11-26, 29-44, 47-62 and 65-72** are rejected under 35 U.S.C. 103(a) as being unpatentable over Horbal et al. (US Pat 6,112,246), hereinafter referred to as Horbal, in view of Traversat et al. (US PG Pub 2002/0143855), hereinafter referred to as Traversat.

7. For **claims 1, 19, 37 and 55**, Horbal discloses *a common interface* (micro-server; see figure 2) *to operate in the communications device* (the micro-server includes a discovery server that is used to discover newly connected network devices; see col. 12 lines 43-55 and figure 12) *and the dissimilar communication devices* (figure 2 shows the micro-server is implemented in dissimilar devices) *to allow communications therebetween in accordance with aspects of the communications device and the dissimilar communication devices that have been abstracted* (the micro server is used to abstract communication protocol aspects of the devices; see col. 2 lines 20-30) *and the communications device* (device that is using the micro-server's discovery functionality; see col. 12 lines 43-55 and figure 12) *further to share data with other dissimilar devices without requiring a proxy device to enable communications* (figure 2 shows the devices on the Ethernet are able to communicate without the use of a proxy).

8. Horbal discloses *a communications device having at least a discovery protocol layer* (device that is using the micro-server's discovery functionality; see col. 12 lines 43-55 and figure

12). Horbal discloses an auto-discovery mechanism where the network is scanned for new devices (see col. 14 lines 30-40) within a particular subnet (see col. 16 lines 63-67). Horbal does not disclose the use of discovery requests. Traversat discloses *initiating a discovery request over the network* (discovery messages are propagated over a network; see paragraph 0286), *the communications device further to receive one or more responses from dissimilar communications devices over the network* (the node that propagates the message receives responses from nodes that have receives the discovery message; see paragraph 0286. Figure 1B shows that devices on the network are dissimilar) *to at least partially determine a network topography* (the purpose of sending the discovery message is to determine the nodes that are in the subnet; see paragraph 0286). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use discovery request messages in Horbal's invention to provide the essential discovery infrastructure for building high-level discovery services (Traversat, paragraph 0261).

9. Specifically for **claim 55**, Horbal discloses *a network* (figure 2 shows an Ethernet network).

10. For **claims 2, 20, 38 and 56**, Horbal discloses the use of *a LAN* (Ethernet of figure 2). Horbal does not disclose the use of discovery requests. Traversat discloses *the initiating of the discovery request* (discovery messages are propagated over a network; see paragraph 0286). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use discovery request messages in Horbal's invention to provide the essential discovery infrastructure for building high-level discovery services (Traversat, paragraph 0261).

11. The combination of Horbal and Traversat discloses *the initiating of the discovery request is performed over a local area network (LAN)* (according to the combination, the propagated discovery messages are sent over the Ethernet).
12. For **claims 3, 21, 39 and 57**, Horbal discloses *prior to said transmitting data, establishing a network connection between said dissimilar communication devices* (the auto-discovery mechanism discovers devices that are connected to the network; see col. 14 lines 30-35).
13. For **claims 4, 22, 40 and 58**, Horbal discloses *said common interface* (micro-server) *comprises a layered functional hierarchy having multiple layers* (figure 4 shows the micro-server functionality is hierarchical; see col. 8 lines 20-25).
14. For **claims 5, 23, 41 and 59**, Horbal discloses *at least one of said multiple layers comprises a protocol layer* (item **426** of figure 4), *said protocol layer including at least two protocols* (figure 4 shows item **426** includes the TCP and the IP protocols).
15. For **claims 6, 24, 42 and 60**, Horbal discloses *said at least two protocols comprise a messaging protocol* (TCP/IP is used to request information from the nodes on the network; see col. 14 lines 47-53).
16. Horbal does not disclose the use of a discovery protocol. Traversat discloses *a discovery protocol* (core discovery protocol; see paragraph 0286). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use a discovery protocol in Horbal's invention to provide the essential discovery infrastructure for building high-level discovery services (Traversat, paragraph 0261).

17. Specifically for **claims 6 and 24**, Horbal does not disclose the use of a discovery protocol. Traversat discloses *the discovery protocol being used to initiate the discovery request* (the core discovery protocol is used to propagate discovery request messages; see paragraph 0286). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use a discovery protocol in Horbal's invention to provide the essential discovery infrastructure for building high-level discovery services (Traversat, paragraph 0261).

18. For **claims 7, 25, 43 and 61**, Horbal suggests *at least one of the multiple layers comprises an abstraction layer including the aspects of the dissimilar communication devices that have been abstracted* (an API is used to abstract the micro-server to the OEM layer; see col. 5 lines 55-58 and col. 6 line 48).

19. For **claims 8, 26, 44 and 62**, Horbal discloses *said data is transmitted between said dissimilar devices through a layer of said layered functional hierarchy* (figure 4 of Horbal shows data is transmitted through a protocol stack and API layer).

20. For **claims 11, 29, 47 and 65**, Horbal discloses consumer devices can communicate via web browser (see col. 4 lines 35-40 and figure 6). Horbal does not disclose the use of file sharing. Traversat discloses *wherein said data comprises at least one file* (peer-to-peer systems are use for file sharing; see paragraph 0015). It would have been obvious to a person of ordinary skill in the art at the time of the invention use file sharing in Horbal's invention to increase the utilization of information (Traversat, paragraph 0013).

21. For **claims 12, 30, 48, and 66**, Horbal does not disclose the use of file sharing. Traversat discloses *said at least one file comprises a digital media file* (music files are shared; see paragraph 0015). It would have been obvious to a person of ordinary skill in the art at the time

of the invention use file sharing in Horbal's invention to increase the utilization of information via Napster (Traversat, paragraphs 0013, 0015).

22. For **claims 13, 31, 49 and 67**, Horbal does not disclose the use of file sharing. Traversat discloses *said digital media file comprises at least one of: a digital video file and a digital audio file* (music files are shared; see paragraph 0015). It would have been obvious to a person of ordinary skill in the art at the time of the invention use file sharing in Horbal's invention to increase the utilization of information via Napster (Traversat, paragraphs 0013, 0015).

23. For **claims 14, 32, 50 and 68**, Horbal discloses *said dissimilar communications devices at least include: computing devices* (client PC's; see figure 2), *wherein the computing devices may be configured to exchange data by use of differing protocols* (figure 6 shows differing protocols can be used to communicate with the micro-server), *remote control devices* (thermostat; see col. 3 lines 25-50). Horbal suggests *digital audio devices, wireless phones, and digital media devices* (Horbal's invention can be implemented in consumer products; see col. 4 lines 34-36).

24. For **claims 15, 33, 51 and 69**, Horbal discloses *said aspects of said dissimilar communications devices that have been abstracted include: controlling* (the thermostat is controlled via micro-server; see col. 3 lines 25-50), *executing* (the OEM API abstracts how functions are executed; see col. 7 lines 10-15), *recording* (the view server that is built into the micro-server abstracts how information is recorded; see figure 12), *storing* (the OEM API abstracts how device information is stored; see col. 7 lines 1-10), *discovering* (the micro-server includes a discovery mechanism; see col. 12 lines 43-55 and figure 12), and *messaging* (the OEM API abstracts the messaging; see col. 6 lines 44-54).

25. For **claims 16, 34, 52 and 70**, Horbal discloses *wherein at least one of said dissimilar communications devices includes a capability to control another of said dissimilar communications devices* (figure 8 shows a control page of the micro-server).

26. For **claims 17, 35, 53 and 71**, Horbal discloses *wherein at least one of said dissimilar communications devices includes a capability to perform at least one of the following tasks: access digital data* (the auto-discovery mechanism of the micro-server accesses information for display in an HTML index page; see col. 17 lines 4-6), *execute digital data, and transfer digital data.*

27. For **claims 18, 36, 54 and 72**, Horbal discloses *wherein at least one of said dissimilar communications devices includes the capability to perform at least one of the following tasks: store digital data, transfer digital data, and organize digital data* (figure 12 shows the micro-server can organize data into a table format for presentation to a user).

28. **Claims 9-10, 27-28, 45-46 and 63-64** are rejected under 35 U.S.C. 103(a) as being unpatentable over Horbal in view of Traversat, as applied to **claims 4, 22, 40 and 58** respectively above, and further in view of Wilkinson et al. (US Pg Pub 2002/0099867), hereinafter known as Wilkinson.

29. For **claims 9, 27, 45 and 63**, Horbal's invention supports the use of standard operating systems (see col. 5 lines 18-30). The combination of Horbal and Traversat does not disclose the use of an operating system layer. Wilkinson discloses *wherein at least one of said layers comprises an operating system layer* (the OS layer 6 is used in a software architecture; see figure 1 and 0043-0044). It would have been obvious to a person of ordinary skill in the art at the time

of the invention to use an OS abstraction layer in Horbal's invention to facilitate an OS independent environment.

30. For **claims 10, 28, 46 and 64**, the combination of Horbal and Traversat does not disclose the use of an operating system layer. Wilkinson discloses *said operating system layer includes the capability to access components of said dissimilar devices* (included in the OS layer is an abstraction layer **14** allowing for the use of third party components such as device drivers **18**; see paragraph 0049). It would have been obvious to a person of ordinary skill in the art at the time of the invention to use a device driver in Horbal's invention since device drivers allow an Operating System (OS) to communicate with the network.

Response to Arguments

31. Applicant's arguments with respect to **claims 1-72** have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY M. RUTKOWSKI whose telephone number is (571)270-1215. The examiner can normally be reached on Monday - Friday 7:30-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kwang Yao can be reached on (571) 272-3182. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey M Rutkowski/
Examiner, Art Unit 2473

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